

A. G. ANDRIKOPOULOS OIL AND GAS PROPERTIES

IBLA 87-258

Decided May 17, 1989

Appeal from a decision of the District Manager, Craig District Office, Wyoming, Bureau of Land Management, requiring salinity control plan for water produced from Elk Springs Oil and Gas Unit No. 3. C-20278.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Stipulations

BLM may properly require a reasonable contingency plan for salinity control in stipulations to a permit for surface discharge of water pursuant to the provisions of Notice to Lessees and Operators of Federal and Indian Oil and Gas Leases (NTL-2B), and the regulations in 43 CFR 3162.5-1 which control disposition of water produced during production of oil and gas on Federal lands. NTL-2B sets forth requirements for handling, storage, or disposal of water produced from oil and gas wells with which all lessees must comply. Methods of water disposal used by a lessee must be approved by BLM.

APPEARANCES: William D. Maer, Esq., Seattle, Washington, for appellant; Lowell L. Madsen, Esq., Office of Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

A. G. Andrikopoulos Oil and Gas Properties (Andrikopoulos) has appealed from a decision of the District Manager, Craig District Office, Wyoming, Bureau of Land Management (BLM). The BLM decision dated December 17, 1986, rejected Andrikopoulos' objection to lease stipulation "c." Stipulation "c" required approval of a salinity control plan to permit surface discharge of water produced at the site of the Elk Springs Oil and Gas Unit No. 3 well, located in the NW¹/₄ SE¹/₄ of sec. 30, T. 5 N., R. 98 W., sixth principal meridian, Moffat County, Colorado (C-20278). The stipulation was adopted from an environmental assessment of the effect of discharging produced water from well No. 3. See EA CO-017-86-34 at 9.

On July 23, 1986, BLM approved Andrikopoulos' application for surface disposal of produced water from well No. 3 with certain stipulations for a term of 6 years, ending March 31, 1992. BLM later reconsidered imposition of stipulation "c" because the threshold amount of salt deposits requiring submission of a salinity control plan was based on historical production from the well, and there was a possibility a salinity control plan might be required sooner should production from well No. 3 increase.

Stipulation "c" provides:

If the quantity and quality of the produced water change so that more than 16.7 tons of salt per month (200 T-yr) are added to the soil as a result of the approved discharge, the operator shall submit a salinity control plan to the White River Area Manager for approval. Said plan shall address how the operator plans to mitigate the affects [sic] of the increased soil salinity resulting from the discharge. The operator shall implement said salinity control plan following receipt of Bureau approval.

BLM determined this stipulation was necessary for the reason:

The Environmental Assessment (EA) for this approval analyzed the deposition of salts at a rate somewhat higher than historical rates by using the highest rate of produced water reported on the Monthly Reports of Operations, rather than an average. The rationale for the mitigation is not to limit the deposition of salts to those levels expected if production remains at historical rates. The EA, on page 21, addresses the conflicts between the proposed action and the Bureau of Land Management (BLM) Lower Wolf Creek Watershed Management Plan. The primary purpose of that plan is to improve water quality by reducing sediment and salt yields to the White River, and ultimately to the Colorado River. According to the EA, the deposition of salt at a rate of 212 tons per year in the same basin where projects to reduce salt yields are being implemented is believed to be contrary to the objectives of that watershed management plan. It was determined that a salinity control plan should be required if production increases and salt deposits exceed 200 tons per year, so that such a plan could be implemented prior to deposits reaching a level of 212 tons per year. A plan to control salinity at such levels would make the surface discharge of produced water consistent with the BLM's management objectives in this area.

(Decision at 1-2).

Andrikopoulos objects to stipulation "c," asserting: (1) it is not authorized by Notice to Lessees and Operators of Federal and Indian Oil and Gas Leases (Jan. 1, 1976) (NTL-2B); (2) the salt limitation was arbitrarily derived and there is no factual, technical, or scientific basis for such limitation; (3) the salt limitation is not necessary to protect the environment, human health, or any resource; and (4) there is no technological

feasible or economically reasonable method to control the salinity of the discharge. A hearing is requested before an Administrative Law Judge pursuant to 43 CFR 4.415 to resolve these objections.

BLM responds that stipulation "c" is authorized by NTL-2B and 43 CFR 3162.5-1(a). BLM contends that the reference in stipulation "c" to monthly salt discharge is not a limitation, but rather a "trigger point" at which a salinity control plan is required to be developed to reduce effects of increased salt on the environment. BLM argues that stipulation "c" does not require desalinization of discharge water as the only method to mitigate the effects of increased soil salinity. Other methods described in the EA may be considered to reduce long-term impacts from increased salinity, according to BLM.

On November 11, 1985, Andrikopoulos applied to the BLM Craig District Office to allow surface discharge as a permanent method of disposal of water produced from the Elk Springs Unit No. 3 (C-20278). Temporary surface disposal of produced water had been previously allowed subject to the requirements of a State of Colorado National Pollution Discharge Elimination System (NPDES) permit (CO-0039683).

Well No. 3 was originally drilled and completed in late 1981 by Petroquest Incorporated (Petroquest), then the operator of the Elk Springs Unit. Apparently, from late 1981 to mid-May of 1983, water produced from well No. 3 was trucked to an off-site disposal facility. In August 1982, Petroquest applied, under provision of NTL-2B, for approval to discharge produced water on the surface at the well site. Petroquest resubmitted the application in November of 1982, indicating that a state NPDES permit application was then pending and that only a 6-month period of surface discharge was needed for well-testing purposes.

The State of Colorado had notice of BLM interest in the quality of water produced by well No. 3 and its effect upon increased salinity in the Colorado River Basin when the NPDES permit was approved March 15, 1983. ^{1/} The State issued the discharge permit subject to conditions for saline discharge. Subsequently, on April 25, 1983, temporary surface discharge of produced water from well No. 3 was approved for a 6-month period, subject to conditions in the State NPDES permit.

Under the terms of the NPDES permit, limits were established for several elements and compounds. Levels of these constituents were to be monitored through monthly water analyses. The NPDES permit also required, within 6 months of approval, that the permittee submit plans to bring the water to a quality acceptable for irrigation and that surface discharge be eliminated (State Permit CO-0039683 at 15).

^{1/} See Addendum to Rationale, Petroquest Incorporated, Permit No. CO-0039683, Moffat County, Colorado, Department of Health Water Quality Control Division, Feb. 23, 1983.

In March 1984, Andrikopoulos became unit operator of the Elk Springs Unit and was assigned a modified NPDES permit by the state. On August 8, 1984, he submitted a revised disposal plan which included use of a settling pond to retain precipitate, installation of facilities to reduce oil and grease and total suspended solids content, and a request to continue the discharge period for 1-1/2 years. On September 21, 1984, BLM granted temporary approval of the proposed discharge method until March 21, 1986.

Finally, on November 15, 1985, Andrikopoulos sought approval from BLM for surface discharge as the permanent method of disposal of produced water from well No. 3. Because past environmental analysis and approvals for surface discharge assumed surface discharge would be temporary, and because of past failures by the operator of well No. 3 to comply with permit standards, BLM conducted a new environmental assessment of the well. While BLM completed this study, Andrikopoulos was allowed to dispose of produced water from well No. 3 on the surface.

[1] Contrary to Andrikopoulos' contention, the provisions of NTL-2B, control the disposition of water produced during the production of oil and gas on Federal lands. NTL-2B sets requirements for handling, storage, or disposal of water produced from oil and gas wells with which all lessees must comply. Methods of disposal used by lessees must be approved by the District Engineer, U.S. Geological Survey (now the BLM's authorized officer) (NTL-2B at 1).

NTL-2B provides guidelines both for temporary and permanent water disposal and is intended to provide the framework for acceptable disposal facilities for new wells. Where only temporary disposal methods have been approved pending final determination of the proper method of disposal by the authorized officer, as in this case, the authorized officer may require changes necessary to bring the disposal method into compliance with permit standards. "However, if the disposal method then employed is endangering the fresh water in the area or otherwise constitutes a hazard to the quality of the environment, the [authorized officer] will direct prompt compliance with the requirements of this notice" (NTL-2B at 8).

In addition, lessees are required to keep BLM informed of the quality of water discharged by submitting annual reports which include total volume and current water analysis. Initial compliance with the notice does not finally establish the limits of the lessee's responsibility for all future water discharge. NTL-2B provides that

[c]ompliance with this Notice does not relieve a lessee or operator of the responsibility for complying with more stringent applicable Federal or State water quality laws and regulations, including those which are subsequently promulgated pursuant to the Safe Drinking Water Act (P.L. 92-523), or with other written orders of the [BLM].

Id. at 9.

A Federal lessee is also responsible for compliance with environmental standards pursuant to 43 CFR 3162.5-1 which provides, pertinently:

(a) The lessee shall conduct operations in a manner which protects * * * environmental quality. In that respect, the lessee shall comply with the pertinent orders of the authorized officer and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan or subsequent operations plan.

* * * * *

(b) The lessee shall exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources or surface improvements. All produced water must be disposed of by injection into the sub-surface, by approved pits, or by other methods which have been approved by the authorized officer. Upon the conclusion of operations, the lessee shall restore or rehabilitate the dis-turbed surface in a manner approved or reasonably prescribed by the authorized officer.

* * * * *

(d) When reasonably required by the authorized officer, a contingency plan shall be submitted describing procedures to be implemented to protect * * * the environment.

BLM is therefore authorized by both NTL-2B and this Departmental regulation to condition approval of an alternate method for permanent surface discharge of produced water with measures to protect the environment. Review of the recent history of the surface discharge from this well indicates there is potential for significant adverse impact on the environment if the quality of the water in the surface discharge is not maintained within limits set by the Colorado Water Quality Control Division in permit CO-0039683.

Stipulation "c" appears reasonably likely to achieve the necessary desired environmental protection consistent with the Bureau's land-use plan for the area. It is consistent with the Bureau's Management Framework Plan recommendation #2.2 for the watershed, which requires use of lease stipulations to insure "[t]hat all exploration and development activities will not allow pollutants, saline water, etc., of greater concentration than that allowed by the Colorado Department of Health to enter any of the surface watercourses of the area * * *." 2/

Moreover, BLM's environmental assessment establishes that surface discharge is contrary to the primary purpose of the Lower Wolf Creek

2/ Memorandum of Decision Record/Rationale EA CO-017-86-34, dated May 30, 1986 (EA CO-017-86-34 at 14).

Watershed Management Plan, which is to improve water quality by reducing sediment and salt yields in the White and Colorado Rivers (EA CO-017-86-34 at 21-22). In addition, the deposition of salt in excess of 212 tons in the same basin exceeds recommended salinity levels and contributes to "the non point source salinity pollution problem," which had been one of the major concerns in the Colorado West Area 208 Water Quality Management Plan developed pursuant to section 208 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) as amended by the Clean Water Act of 1977 (EA at 22).

Appellant has had notice of all relevant restrictions on discharge of produced water since he became unit operator. He has not shown that there is no longer a need to maintain compliance with these restrictions. Further, he has failed to present evidence with this appeal to show there is no feasible method to control the salinity of the discharge or that the salt limitation set for well No. 3 was arbitrarily derived or not necessary to protect the environment. Consequently, BLM could reasonably provide a system of control to prevent adverse effects from the surface discharge allowed at well No. 3. We find that imposition by BLM of stipulation "c" is supported by the record, and affirm the District Manager's decision.

Nor has Andrikopoulos persuaded us that a hearing is needed to resolve his objections to stipulation "c." A hearing is not necessary if there is no allegation of material fact which, if proven, would alter the disposition of the appeal. See, e.g., Stickelman v. United States, 563 F.2d 413, 417 (9th Cir. 1977); United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 453 (9th Cir. 1971); Marie M. Bunn, 100 IBLA 1, 6 (1987); Kim C. Evans, 82 IBLA 319, 323 (1984). Because no such showing has been made, the request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Kathryn Lynn
Administrative Judge
Alternate Member